# PERSONAL NAMES.

The law of personal names, though not of high importance in itself, is an interesting example of common-law development. Unhampered, as it has been for the most part, by direct legislation, it has expanded gradually to meet the exigencies of changed conditions, illustrating most typically the progress of the common law. There are, however, at present, certain possibilities, which show that, in some places, this law is theoretically unsatisfactory.

In England, the use of surnames, though sporadically appearing at an earlier time, was not found to be universally necessary until the early part of the fourteenth century. At that time, owing to the paucity of Christian names (probably an estimate of two hundred would cover them all), it became customary to add a name to that of baptism. These names were picked and applied at random —a man's physical, mental or moral characteristics, his occupation or his place of residence, even his real or fancied resemblance to an animal, supplied a myriad surnames which still exist.[1] These were at first merely temporary, not always lasting as long as the lives of the persons so named, and were not transferred to descendants.[2]

Gradually the son came to take the surname of his father, and the wife (when she took one), that of the husband. Since the matter was made the subject of but unimportant legislation,[3] the custom developed slowly, and might of course be interrupted by the caprice of any person wishing to abandon his surname. By the time of Elizabeth, however, owing partly to increased commerce and communication, which, to avoid confusion, necessitated surnames, and partly to the regulation of Thomas Cromwell, in the

1. *E. g.* Strong, Wiley, Goodman, Archer, Kent, Wolf, etc.

2. In *Camden's Remains*, (1637) is spoken of one William Belward, Knt., whose grandsons (in agnate line), were surnamed Egerton Overtoun, Gough (red), Kenclark (learned clerk), Goodman, Richardson, etc.

3. A statute of the fourth year of Edward IV., provided that every Irishman within the English pale should take an English surname, and enacted that this name should be that of some town, color, art, occupation or office. Non-compliance was attended with forfeiture of goods. The Statute of Additions (1 Hen. V. c. 8) required in a writ or indictment the name, calling degree, or title, and the town or hamlet in which the defendant or accused lived. These references are found in *Re Snook*, 2 Hilt. 566.

reign of Henry VIII, that a parish record be uniformly kept of births, marriages, and deaths occurring in each parish, the use of such names became fixed. But the law had always regarded the Christian name, with the sanction of baptism behind it, as all-important. Says Coke:[4] "And regularly it is requisite . . . that speciall heed bee taken to the name of baptism for that a man cannot have two names of baptism as he may have divers surnames."[5] This rule caused some difficulty, especially in the drawing of indictments[6] and has of course, long since lapsed.

In course of time it became customary to give a child one or more middle names, but for the historical reasons above given, the law has always regarded such a name as unimportant, treating the omission of it, or of course, of its initial, as of no legal effect.[7] There is a direct conflict as to whether the middle name or initial, when given, must be correct, the more logical rule being that it need not.[8] This is of course not true of the initial of a first name. The designations Jr. and Sr. are also not essential.[9]

A curious example of the quibbles into which the common law sometimes falls was developed by the use of single letters as names. It was many times held that while a vowel, being a complete sound in itself, was sufficient to constitute a name, a consonant, representing only part of a compound sound, could not so act.[10] This absurd distinction was exploded in the case of *Reg. v. Dale* (15 Jur. 657), by Lord Campbell, and has never since been revived. It was, apparently, once seriously contended for in

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4. *Coke Litt.* § 3 (*a*).

5. See also *Button v. Wrightman*, Poph. 56. "The law is not so precise in the case of surnames, but for the Christian name, this ought always to be perfect."

6. In *Loyd's Case*, Noy 135, a process against Evanum *alias* Ievanum Loyd was declared void because "no man can have two Christian names." See also *East Skidmore v. Vandstevan*, Cro. Eliz. 56.

7. *Roosevelt v. Gardinier*, 2 Cow. 463; *Bletch v. Johnson*, 40 Ill. 116. But this is not so in Massachusetts. *Terry v. Sisson*, 125 Mass. 563; *Parker v. Parker*, 146 Mass. 320. Obviously the use of more than one middle name might cause confusion in that state.

8. *King v. Clark*, 7 Mo. 269; *R. R. v. Pierce*, 72 N. E. 604. Holding that the middle initial need not be correctly given even in a criminal prosecution; *English v. State*, 30 Tex. App. 30; *People v. Lockwood*, 6 Cal. 205; *Franklin v. Talmadge*, 5 Johns. 84; *Coe. v. Durham*, 128 Fed. 870.

9. *State v. Cafiero*, 112 La. 453; *Headley v. Shaw*, 39 Ill. 354. *contra*, *State v. Vittum*, 9 N. H. 522.

10. *Kinnersley v. Knott*, 7 C. B. 980. *Lomax v. Landells*, 6 C. B. 577.

Connecticut,[11] but the holding was that the consonants J. W. constituted a perfectly valid Christian name.

From what has preceded it is evident that, without statutes, any person may at will change his name. Indeed, the fact that in recent years two men—Grant and Cleveland—have been elected presidents of the United States under Christian names other than those given to them at baptism, confirms the universal assent to the proposition. It is upheld in numberless cases.[12] A change so made requires no formalities, the oft-quoted dictum of Lord Mansfield in *Gulliver v. Ashley* (4 Burr, 1940) that "many things are to be done . . . such as a grant from the king or an act of Parliament" being quite obviously the result of a confusion arising in the custom which had sprung up of petitioning Parliament or the king for sanction,—a custom of convenience merely, and not of necessity.[13]

In this country many states have legislated upon the subject of the change of names. A brief examination of these statutes, however, will show that, even in the instance where it is forbidden to engage in trade under a fictitious or assumed name[14] the common law has really not been abrogated, and that these statutes have a very different effect from the cognate legislation in some of the European states.

In Pennsylvania it "is *lawful* for the Court of Common Pleas"

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11. *Tweedy v. Jarvis*, 27 Ct. 42. It has been held in South Carolina that the initials A. O. cannot constitute a name; *Morris v. Graves*, 4 Strob. 32; but the decision is anomalous in the state; *Kirlock v. Carsten*, 5 Rich. 330. "In this country a man may take the letters A. W. for his first name, for there is no union between church and state and no obligation for parents to baptize their children; the first name may be changed as well as the patronymic." *City Council v. King*, 4 McCord L. 487.

12. *Doe v. Yates*, 5 Barn. & Ald. 544; *Sinton v. Bank*, 10 Fed. 897; *Laflin and Rand Powder Co. v. Steytler*, 14 L. R. A. 690; *England v. N. Y. Pub. Co.*, 8 Daly 375, etc.

13. *Davies v. Lowndes*, 1 Bing. N. C. 618. "It [the application for the Royal sign manual] is a mode which persons often have recourse to, because it gives a greater sanction to it, and makes it more notorious, but a man may if he chooses and it is not done for any fraudulent purpose, take a name and work his way in the world . . . as well as he can."

14. New York, Laws of 1900, p. 452 (c. 216 § 3636). The provision is that a certificate must be filed in conformity with the act, before a person may engage in business under an assumed name. See also Mass. Gen. Stat. 1860 p. 298. For a case showing the necessity for such statutes, see *Olin v. Bate*, 98 Ill. 53.

to decree a change of name for a resident.[15] In New York an application is made and if the court is satisfied that "there is no reasonable objection that such person should assume another name, the court shall make an order authorizing the change."[16] This statute has been interpreted to predicate that the applicant shall show a direct pecuniary advantage from the proposed change.[17] Nothing prevents him, however, from changing his name of his own accord.[18] In Massachusetts the wording of the statute is more imperative, though the effect is the same. "Applications for change of names of persons may be heard and determined in the Probate Courts . . . No lawful change of name, except upon the adoption of a child or upon the marriage or divorce of a woman shall be made unless for sufficient reason consistent with public interest and satisfactory to said court. . . . "[19]

This statute of Massachusetts has a nearer resemblance to the German and French laws, but lacks their prohibitive force. In France as in the Roman law before it, there was at first no prohibition against name changing, until 1555, in the reign of Henry II.[20] Later, other laws,[21] forbidding any citizen to bear any name other than that which is expressed in the registry of his birth, or to add any surname to his proper name, were passed. These are in force in the present French law. The German law is practically the same with the addition of imposing a penalty if one gives a wrong name to an official.[22] In both countries the application is published and persons interested may appear to oppose the change.

A comparison of the results of these laws shows this distinction—in France and Germany the usurpation of a name renders one liable in action either to the state or to the individual, in England and the United States, generally speaking, this is not true. Moreover it is evident that in the former countries a name is regarded as, in itself, and without considering it as an adjunct to trade, a

15. Stat. Penn., 1852, §1 P. L. 301.

16. N. Y. Stat. at L. IV. 285.

17. *Smith v. Luce*, 13 Wend. 237, *Petition of Snook*, 2 Hilt. 566.

18. See, however, note 14, *supra*.

19. Mass. Gen. Stat. (1860), 110, § 11 P. A. (1882)p. 826. In Connecticut the Superior Court *may* change the name of any applicant. Gen. Stat. (1888) § 783.

20. "*Mais comme cette licence de changer ainsi de nom et d'armes produisait le plus grande abus, le roi Henri II. y remédia par une Ordonnance.*" *Merlin, Repetoire de Jurisprudence tit Nom* § 3.

21. Lois 6 Fruct., An. II.; 11 Germ. An. XI.

22. Strafgesetzbuch § 360, No. 8.

property right.[23] In the latter this is not true. No man has a property right in his name *per se*. In a recent English case[24] it is said: "Speaking generally, the law of this country allows any person to assume and use any name, provided its use is not calculated to deceive or inflict pecuniary loss." Admittedly, when a name or a combination of names has, through association with a certain business or trade attained a distinct and separate value, the law affords it protection. But even in these cases of trade-names a troublesome conflict of principles arises when it is attempted to exclude others from the use of their own names in a particular business. Sometimes it so happens that either the one must be deprived of his right to use his name honestly, or the other must be deprived of the right to use a name exclusively which his enterprise and integrity have made highly valuable. Logically the rights of the former should be paramount, but here the public is entitled to be secure from fraud and the cases seem to conflict. The later cases, however, lead plainly, when taken in the aggregate, to this conclusion,—if a man is using his own name for his own trade or business, no other indicia of fraud being present, he may not be interfered with,[25] but when he has given his name, which is like that of another in the same trade or business, to a corporation, the courts will restrain its use, though no other fraud be shown, if the public is

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23. *Le nom que chaque individu porte est pour lui une propriété. Il a la droit de s'opposer à ce qu'il soit pris par un autre. L'usurpation d'un nom donne lieu à une action devant les tribunaux. Dict. du Notariat*, sec. 2. (*De la Propriété de Noms*).

24. *Dockrell v. Dougall*, 80 L. T. 556 (C. A.)

25. *Meneely v. Meneely*, 62 N. Y., 427. Names may be considered as *quasi*—rather than absolute—trademarks (IV Harv. L. Rev. 326). Says Browne: (*Browne on Trademarks*, §206.) "The rule is that a man cannot turn his name into a trademark. Any other rule would lead to most absurd consequences. There are several *dicta* the other way, but they must be attributed to a loose habit of speech or a want of acquaintance with the indispensable requisites of a technical trademark. No wise man in these days would for an instant rely upon such an insecure tenure of title. If one man's name may be a trademark, so may any other man's name also; John Smith is a man's name; therefore, John Smith is a valid trademark. Syllogistic absurdity!"

It is usually necessary to show fraudulent facts in connection with the use of the name, which are likely to deceive the public. *Cream Co. v. Keller*, 85 Fed. 643. One selling goods prominently marked with his own name and initials, not using other words to aggravate the inevitable consequent confusion (when another of the same name is in the same trade) cannot be restrained, no matter by what motive he is actuated. *Mfg. Co. v. Rogers*, 84 Fed. 639.

in the slightest danger of being misled.[26] The ground is, of course, fraud both as to the individual and as to the public,—but especially as to the public.

In these trade-name cases we occasionally discover *dicta* which seem to assert that the name, *per se*, and without connection with property rights, is protected; but the context will usually show that this is not intended. In *Howard v. Henriques* (3 Sandf. 725), for example, Justice Campbell says: "But he must not, by dressing himself in another man's garments and by assuming another man's name, endeavor to deprive that man of his own individuality." But he continues: " . . and thus despoil him of the gains to which by his industry and skill he is fairly entitled."

Aside from the question of direct pecuniary interest, however, which in most cases the policy of our laws protects, and consequently aside from the question of fraud—for fraud is the basis of the right of complaint—there is no remedy against a person who adopts the name of another. Abstractly, this seems unjust, for there can be a no more valuable patrimony than a good name; it is, though outside the pale of commerce, one of the most prized attributes of man. The arbitrary adoption of a person's name may cause him boundless annoyance, confusion and humiliation.

Many examples of how this state of the law might cause indirect property loss and real mental suffering are imaginable; occasionally they actually occur. Immediately after the Civil war the freedmen appropriated at wholesale the names of families in which they had formerly served,[27] to the confusion of both individuals and the government, and to the consequent detriment of the original name holders. Another instance occurs where a husband obtains an absolute divorce from his wife. Nothing, it seems, can

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26. When a corporation takes the name of an individual—even though he may be a stockholder—and this action may lead to the confusion of the public, no fraudulent intent need be shown. *Higgins, etc., Co. v. Higgins Soap Co.*, 144 N. Y. 462; *Dodge, etc., Co. v. Dodge*, 145 Cal. 390.

A case showing the extreme of this doctrine is *Van Houten v. Hooton, etc., Co.*, 130 Fed. 600. It will be noticed that it requires some imagination to conceive of these names even as *idem sonans*—(the court said that the public was likely to mispronounce Van Houten!). The court enjoined the defendants from the use of a name (upon which, it is evident, they had built an extensive business) in the face of proof positive that there was no fraudulent intent. The original president of the firm was named Hooton, but he had severed his connection with it before suit was brought.

27. A case where similar conditions existed arose in St. Lucia (*Du Boulay v. Du Boulay*, L. R. 2 P. C. 430) and was decided in the freedman's favor.

legally prevent her from continuing to use his name, though she thereafter become notorious through improper conduct.[28]

While it cannot be denied, however, that the refusal of the courts to recognize the rights of a name as such and their natural and consistent hesitation in pronouncing the name property until its pecuniary value can be shown, result occasionally in great hardships, instances of such results are surprisingly rare.[29] Theoretically incomplete, the law of names shows how most satisfactorily the common law and equity expand to meet all practical needs.

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28. In the case of *Cowley v. Cowley* (1901) A. C. 450, the defendant was enjoined from continuing to use the title "countess" after divorce and remarriage. But the court distinctly states that this would not be so in the case of a mere name, which could not, of course, be considered an incorporeal hereditament nor would the injunction have been granted in this case had the defendant continued unmarried after the divorce. In *Blanc v. Blanc*, 47 N. Y. S. 694, it is decided that a divorced woman may be enjoined from continuing to use the name of a former husband, that prohibition having been part of the original judgment. Such a prohibition is here upheld as good by an argument which cites no authority and could not, we believe, be logically defended.

29. In *Du Boulay v. Du Boulay*, *supra*, it is said that during the sixty odd years that the French code had then been in force, only two cases on the subject had been recorded.